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Supreme Court, U.S.
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No. 95-2054

In The

Supreme Court of the United States

October Term, 1995

ROBERT GUSTAFSON,

Petitioner,

v.

CITY OF LAKE ANGELUS; DONALD ALTHOFF, Mayor of the City of Lake Angelus; MICHAEL STEFANI, Chief of Lake Angelus Police Force,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER, ROBERT GUSTAFSON

This SUPPLEMENTAL BRIEF is provided pursuant to United States Supreme Court Rule 15.8, which permits the filing of a Supplemental Brief and new Exhibits, at any time prior to the Court taking action upon the Petition for Certiorari, when relevant new legislation becomes available which did not exist at the time of the party's last filing.

I. THE STATE OF MICHIGAN HAS NOW FURTHER PREEMPTED THE LAKE ANGELUS SEAPLANE ORDINANCES THROUGH RECENT CHANGES TO THE MICHIGAN AERONAUTICS CODE.

In its Opinion, The Circuit Court below states:

> Plaintiff also argues that the ordinances are preempted by state law, relying on Mich. Comp. Laws Ann. 281.1017 and the Michigan Aeronautics Code, Mich. Comp. Laws Ann. 259.1 *et seq.* We disagree. There is nothing in these provisions to indicate the legislature's intent to take over a municipalities' responsibilities in the area of land or water use, development, or the location of aeronautical landing sites. (Petition App. 1, at page 26).

On or about August 6, 1996, the State of Michigan enacted revisions to the Aeronautics Code Of The State Of Michigan, specifically Mich. Comp. Laws Ann. 259.51.(1), which has now been revised in part as follows:

> "The [Michigan Aeronautics] commission has general supervision over aeronautics within this state, with ***EXCLUSIVE AUTHORITY*** to

> approve the operation of airports, **landing fields,** and other aeronautical facilities within the state, so as to assure a uniformity in regulations covering aeronautics . . . " (Emphasis added). (MCLA 259.51(1), Supplemental Brief App. 1).

Section 259.21, as amended states that a **"Landing Field"** means any location, either on land or ***on water,*** that is used for the landing or take-off of aircraft. (Emphasis added). (MCLA 259.21, Supplemental Brief App. 1).

Prior to the August 6, 1996 revision, the Statute, MCLA 259.51(1) DID NOT include the language " . . . with exclusive authority to approve the operation of airports, landing fields, and other aeronautical facilities within the state, so as to assure a uniformity in regulations covering aeronautics . . . " With this new language, the Michigan State Legislature has now made clear that the Central State Agency with the unique expertise in Aviation matters, the **Michigan Aeronautics Commission,** now has the EXCLUSIVE AUTHORITY over local municipalities such as the Respondent City of Lake Angelus, to determine what Aviation Use may be permitted on the surface of Lake Angelus.

As previously set forth in both the Petition and in the Reply Brief, the City of Lake Angelus had requested that the Michigan Bureau of Aeronautics, a division of the Michigan Aeronautics Commission, itself prohibit seaplane operations on Lake Angelus. Mr. James Greshel, Administrator, Safety and Services Division of the Michigan Bureau of Aeronautics, personally investigated this request. Mr. Greshel refused to prohibit seaplanes from

the surface of Lake Angelus, and saw no factor which would prevent aircraft from safely taking off or landing on Lake Angelus. He stated *"[T]here is no significant aviation safety or airspace basis to exclude seaplanes from Lake Angelus."* (Petition App. 9, at pages 88, 89).

Petitioner realizes that this new Michigan statute may well limit the ruling of the Circuit Court below. Since the issue of the new Michigan statute could not have been raised in the Courts below (since it did not then exist), Petitioner is not at this time requesting that the Supreme Court rule on its effect upon this case, but merely feels obligated, in the spirit of candor, to advise the Court of this legislation which has never been considered herein. The new legislation does not in any way detract from the issues of Federal Preemption, nor the worthiness of this case as a candidate for a granting of Certiorari.

II. CONCLUSION

For all of the reasons stated, Petitioner, Robert Gustafson, prays that this Honorable Court grant a Writ of Certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

STEVEN M. CHAIT & ASSOCIATES, P.C.

STEVEN M. CHAIT

APPENDIX

AERONAUTICS CODE OF THE STATE OF MICHIGAN ACT 327 OF 1945

Revised: August 6, 1996

259.21 "Landing field" defined.

Sec. 21. "Landing field" means any location, either on land or water, that is used for the landing or take-off of aircraft.

History: 1945, Act 327, Imd. Eff. May 28, 1945; – CL1948, 259.21; – Am. 1996, Act 370, Imd. Eff. July 3, 1996.

Former law: See section 1 of Act 177 of 1929, being CL 1929, § 4801; Act 53 of 1931; and Act 264 of 1939.

* * *

CHAPTER IV.

GENERAL POWERS AND DUTIES OF AERONAUTICS COMMISSION AND DIRECTOR OF AERONAUTICS.

259.51. Aeronautics commission; powers and duties generally.

Sec. 51. (1) The commission has general supervision over aeronautics within this state, with exclusive authority to approve the operation of airports, landing fields, and other aeronautical facilities within the state, so as to assure a uniformity in regulations covering aeronautics. The commission shall encourage, foster, and participate with and provide grants to the political subdivisions of this state in the development of aeronautics within this state. The commission shall establish and encourage the

establishment of airports, landing fields, and other aeronautical facilities. The commission shall promulgate rules that it considers necessary and advisable for the public safety governing the designing, laying out, location, building, equipping, and operation of airports and landing fields. In order to implement this act, the commission may establish programs of state financial assistance in the form of grants, leases, loans, and purchases, or a combination of grants, leases, loans, and purchases, for assisting political subdivisions or other persons. The commission shall not grant an exclusive right for the use of an aeronautical facility. The commission may by the issuance of appropriate and effective rules register pilot's certificates issued by the civil aeronautics authority or other similar federal authority to resident pilots of the state for which it may charge a fee not to exceed $5.00; govern and regulate commercial operations in intrastate commerce for which it may charge a fee of not more than $25.00; and provide for the licensing of aircraft dealers for which it may charge a fee of not more than $25.00.

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